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Shifting Responsibilities for EU Roma Citizens The 2010 French affair on Roma evictions and expulsions continued

Sergio Carrera**No. 55 / June 2013**

Abstract

The evictions and expulsions of Romanian and Bulgarian Roma nationals by France during the summer of 2010 attracted heated debates across national, European and international spheres. What has happened since then? Despite the ultimatum delivered to the former French government by Viviane Reding, Vice-President of the European Commission, to adapt its national law 'to the letter' of the Citizens Directive 2004/38, the country has in practice continued to evict and expel Romanian and Bulgarian nationals of Roma origin. This paper examines the state of affairs with respect to France's policy on eviction and expulsion of Roma and assesses the way in which the controversy has developed since then and can be understood from the perspective of European citizenship. On the basis of an examination of the subsequent responses by the European Commission and the EU member states involved, as well as of a recent bilateral agreement concluded between France and Romania on the reintegration of families of Romanian citizens belonging to the Roma minority who have exercised their freedom to move to France, the paper suggests that there has been a paradigm shift in the priorities driving EU and member states policy responses and politics. This shift has led to an ethnicisation of citizenship of the Union, where ethnicity increasingly performs a decisive role in the allocation and attribution of responsibility to safeguard the union freedoms of Roma citizens. The French Roma affair reveals a set of evolving strategies amongst the various institutional actors at stake primarily aimed at shifting responsibilities between EU and national (member states) spheres towards the protection of Romanian and Bulgarian EU citizens of Roma origins.

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Shifting Responsibilities for EU Roma Citizens

The 2010 French affair on Roma evictions and expulsions continued

Sergio Carrera*

CEPS Paper in Liberty and Security in Europe No. 55 / June 2013

Executive Summary

The 2010 French affair on evictions and expulsions of Romanian and Bulgarian nationals of Roma origins sorely tested the foundations and normative assumptions delineating citizenship of the Union. After the turf wars evidenced between the highest European Commission offices and the former French government of Sarkozy in the summer of 2010, the political waters calmed down after France pledged to transpose on paper the guarantees foreseen by the Citizens Directive 2004/38 into French national legislation. The Commission decided not to launch infringement proceedings and bring France before the Court of Justice in Luxembourg, and considered French national law to be formally in compliance with EU citizenship law and free movement law. **While not much has publicly transpired about the whereabouts and subsequent developments of the affair, this paper demonstrates that the situation remains largely unresolved.**

Evictions and expulsions have not only continued since the end of 2010, but they have gradually increased throughout 2011, 2012 and the first half of 2013. Contrary to early expectations, the government of François Hollande has maintained these practices. **They have been clothed in an apparent ‘legality’ and continued under different guises.** While the law might be formally in line with EU free movement legislation, what remains at stake is the lawfulness of the actual administrative practices implementing it in a daily basis by the relevant competent authorities. The public intended goal and effects of the French evictions and repatriation policies have not really changed. A central question remains unanswered: Does France’s current policy on evictions and returns primarily target Romanian and Bulgarian nationals of Roma origins?

This paper examines **the ways in which the French Roma controversy can be considered from the perspective of citizenship of the Union.** Our argument is that the controversy can be better understood in a context of evolving political struggles between the EU institutions and national authorities over the questions **‘whose responsibility’ and ‘whose citizens’ are Roma holding Romanian and Bulgarian nationality and exercising the EU freedom to move.** Citizenship of the Union has exerted its most visible consequences over the power relations between EU and member state governments and the exact remits of authority over the freedoms and security of residence of mobile EU citizens. The disputes and strategies of reshaping the scope of competences and responsibilities between national and EU authorities need to be primarily understood from this sociology of policy-making perspective. The Commission and the French and Romanian governments have engaged in a series of discursive and policy strategies primarily aimed at narrowing down and to a certain extent evading their own responsibilities over the treatment and discrimination of mobile EU Roma citizens.

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Since the beginning of the events the French and Romanian governments qualified the issue as ‘a problem’ requiring a ‘European solution’. The Commission reacted by returning the onus of citizenship duties back towards the national arenas through the EU Framework on Roma Integration Strategies, which insist on the need for national governments to fulfil their own duties ‘at home’. The Commission has also expressed its lack of legal competence over these domestic issues, such as those related to access to housing and evictions. By doing so, the close linkages between the effects that the French evictions and expulsion policies have from a free movement angle *in combination with* non-discrimination and fundamental rights are neglected. It also fails to acknowledge the nuances regarding the administrative procedures and the blurring legal aspects signalled in the implementing of EU free movement legislation in a daily basis by the various relevant competent authorities in France as well as their alleged discriminatory nature and compatibility with the Race Equality Directive 2000/43. Moreover, the damaging effects of the eviction policies over the right to reside in a second member state envisaged in EU free movement law have been therefore well documented by civil society organisations and human rights monitoring bodies.

There has been a **distinctive paradigm shift at EU level** from the priority given to enforcing EU free movement and non-discrimination law, towards the promotion of EU (soft) policy coordination of member states’ policies on the (re)integration of Roma, now also mixed with a discourse on inclusion and reinsertion. This policy transition has somehow **reallocated the justification over the derogations in EU citizenship freedoms and rights towards the Roma themselves** calling them to be (re)integrated in their national societies. Discriminatory treatment of EU Roma citizens having exercised their freedom to move has been legitimised because of their perceived nomadic and sedentary behaviour, and their lack of ‘integration’ into the perceived mainstream nation and the cohesiveness of society in their countries of origin. Priority has been granted to the ‘re-integration’ of EU Roma citizens in Romania and Bulgaria as a way to indirectly prevent them from re-exercising their freedom to move.

A recent bilateral agreement between France and Romania constitutes a case in point by aiming at fostering the reintegration of Romanian families of Roma origin by granting those returned back to Romania a financial retribution in the form of ‘aid for reintegration’ to foster their economic and societal reinsertion there. The underlying public goal might well constitute a challenge or even an indirect restriction to the right to leave envisaged in the Citizens Directive 2004/38, which stipulates the right by all EU citizens holding a valid identity card or a passport to leave the territory of a Member State to travel to another one.

This paper underlines how **the shifting of responsibilities and the understanding of integration and re-integration policies as the solution to address Roma evictions and expulsions in France** (and elsewhere in other EU member states engaged in similar practices) **conflict with the non-discriminatory fundamentals at the basis of European citizenship**. The reactions by the European Commission and the member states involved have perhaps most profoundly taken citizenship of the Union towards distant and unprecedented venues where ethnicity has acquired a decisive function in the allocation and attribution of responsibility to secure citizenship of the union freedoms to Roma. The policy transition towards (re)integration conflicts with the duty by Member States authorities not to discriminate on the basis of nationality and ‘ethnicity’ of the right to leave one’s country and settle in another member state, which lay at the root of the EU legal system and the status of citizenship of the Union. This, in turn, has legitimised the continuation and ‘normalisation’ of insecurity practices such as the evictions and expulsions of EU Roma citizens which call for a critical re-interrogation of the scope and potential of EU citizenship.

On the basis of our analysis, the following **key findings and conclusions** can be highlighted:

First, the French policy on evictions and expulsions of Romanian and Bulgarian nationals of Roma origin has continued since the end of 2010 until our days. No publicly available official statistical data exist as regards the scope and actual reach of these practices and their implementation. Information and analysis provided by civil society organisations, however, demonstrate that **evictions and repatriations have not only remained unchanged but have been reinvigorated during 2011 and 2012. The number of returns of Romanian nationals from France has however gradually increased since 2010**. This includes those of a forced nature (section 2). The concerns expressed by non-governmental actors has been confirmed by several decisions of the European Committee of Social Rights and a Resolution of the Committee of Ministers of the Council of Europe, which have found the French policy to be in contradiction with the

European Social Charter rights of human dignity and constituting indirect discrimination and having a disproportionate impact on the Roma.

Second, there has been a **policy move in the European Commission's political and policy responses** to the affair away from an enforcement-driven logic centred on guaranteeing France's compliance with EU free movement legislation, towards a prioritisation given to developing and fostering an EU coordination framework of member states' Roma integration strategies. The latter aims to encourage national integration policies and foster bilateral or supranational member state cooperation.

The French government's strategy has consisted of accommodating the letter of its national legislation to free movement law of the Union. Yet **their practices and procedures on the ground appear to be consistently similar to those displayed in the summer of 2010**. French authorities have expressed on several occasions that despite the need to formally comply with the order to transpose the Directive into national law and keeping the relationship with the Commission serene, the goals and effects of the French evictions and repatriation policy have not really changed. These practices have continued in different guises. While the law might be formally in line with EU free movement and citizenship legislation, what still remains at stake is **the lawfulness of the actual administrative practices implementing it on a daily basis by the relevant authorities** (section 3.1 above). There are still a number of important open questions regarding the administrative procedures and the informalities implementing the law on a daily basis by the various relevant competent authorities as well as their discriminatory nature and **compatibility with the Race Equality Directive 2000/43**.

Most of the efforts and policy responses in European Roma politics have since 2010 paid attention to the integration of Roma in the framework of a soft-policy EU coordination mechanism of member states' inclusion policies, i.e. the EU Framework of National Roma Integration Strategies. **The main weaknesses** of this EU Framework are: **1)** its soft (non-legally binding) nature and monitoring system and the difficulties for the European Commission to effectively ensure or enforce the practical and effective implementation of member states' commitments; **2)** the lack of any robust non-discrimination dimension in the Framework, in particular in relation to EU Roma citizens having exercised the freedom to move and reside in a second member state; **3)** the unclear linkage between member states' performance in implementing EU free movement and non-discrimination legislation; and **4)** the rather weak or even non-existing contributions by national civil society organisations to the development and elaboration of the member states' national strategies (section 3.2 of the paper).

Some of the member states concerned have also developed bilateral cooperation on questions related to the re-integration of Roma individuals falling outside the EU legal and policy framework of cooperation. In September 2012, **France and Romania concluded a bilateral agreement on the reintegration or re-insertion of families of Romanian citizens belonging to the Roma minority covering 'mobile Roma citizens'**. One of the key goals is to ensure that Roma families returned from France are reintegrated 'economically and socially' in Romania with the indirect or non-expressly stated aim at preventing them from moving back to the country or from exercising their right of free movement as EU citizens. Another is a framework of police cooperation within which Romanian policemen are sent to France to assist French authorities in identifying Roma and 'criminals' and returning them to Romania.

Third, the paper then moves into an examination of the ways in which this EU policy transition can be understood from **the angle of citizenship of the Union**, and the extent to which European citizenship has influenced the developments and current state of play of the French affair of Roma evictions and expulsions. The evolving agendas and disputes of EU, French and Romanian authorities need to be mainly understood from the perspective of **'whose responsibility' are Romanian nationals of Roma origin exercising the free movement of persons principles, and henceforth 'whose citizens' are those people being targeted with evictions and returns**. The policy developments since the end of 2010 reveal a dynamic reframing and reinterpretation of the scope and remits of responsibilities over the discrimination and expulsions experienced by Roma between the EU and national institutional levels, going back and forth between their description as a 'European' or a 'national' (member state) issue or 'problem'. **The shifting of responsibilities**, or of the duty to protect, **between domestic and European institutional actors** has so far dominated and partly justified the unresolved state of affairs in the case.

As a response to the allegations by the member states involved in the affair that mobile Roma were an issue requiring a ‘European solution’ excluding their national responsibility, the European Commission has given increasing priority to encouraging national governments to fulfil their own duties in the scope of the EU Framework on national Roma integration policies (section 4.1). The Commission has perhaps taken this framework as an opportunity to give member states incentives to develop and finance their own national efforts on Roma policies and bilateral cooperation. By doing so, it may be indirectly **renouncing its ownership over EU citizenship acts and claims of Romanian and Bulgarian nationals of Roma origins**. This has accompanied the Commission’s position according to which it does not recognise itself as having the necessary legal competence to scrutinise France’s practices on evictions and dismantlement of camps affecting Romanian and Bulgarian nationals. This fails to capitalise on **the linkages emerging from the multilayered effects that the French evictions and expulsion policies present from a free movement angle in conjunction with non-discrimination and fundamental rights, which lay at the heart of citizenship of the Union**.

Fourth, the policy transition in EU and member states’ policies and strategies, which is identified in this paper, has raised **fundamental tensions between citizenship of the Union, free movement and (re)integration of Roma EU citizens by passing the buck to the Roma themselves** as regards their responsibility to integrate or re-insert themselves in the national societies of the attributed member states of origin. The Commission and (French and Romanian) member states’ responses have revealed several paradoxes over the legal and political foundations of European citizenship. The prominent focus attributed to integration and reintegration of mobile EU citizens of Roma origin brings ‘ethnicity’ and the cultural differences ascribed to the lifestyles of Roma populations to the core of citizenship of the Union, which is taking on an unlawful ethnic dimension.

The legitimate exercise of the freedom to move by Roma citizens has been reframed as the undesired form of mobility artificially linked with their supposed nomadic or sedentary way of life and non-evidence-based politicised fears of their potential ‘abuses’ of social welfare benefits and criminality in receiving countries like France. This is not only intended to justify the implementation of disproportionate and discriminatory evictions and expulsions from France to Romania, but also the promotion of those who had moved of their reintegration in Romania as a way to indirectly encourage them not to leave their country of origin as citizens. **These policies contradict the principle and fundamental right of non-discrimination on the basis of ethnic origin and the right to leave the state of origin and reside in another member state envisaged in EU citizenship law** (section 4.2).

Introduction

The evictions and expulsions of Romanian and Bulgarian nationals of Roma origin by France during the summer of 2010 provoked heated debates in national, European and international circles. The controversy constituted one of those rare occasions where the highest representatives of the European Union's institutions and those of an influential member state government engaged in turf wars over issues related to citizenship of the Union and the discrimination of EU Roma citizens. Three years have now passed and not much has been communicated to the public about the final outcome of the affair. Since then French President Nicolas Sarkozy declared his willingness to follow 'the ultimatum' issued by the Vice-President of the European Commission Viviane Reding in October 2010 to adapt its national immigration law 'to the letter' of the Citizens Directive 2004/38,¹ no further EU-level action has taken place against France.

This paper argues that the case remains unresolved. The French authorities have continued to evict and expel Romanian and Bulgarian nationals of Roma origin throughout 2011, 2012 and the first trimester of 2013 under the current François Hollande's government. Although official statistics about these practices are scarce, a wealth of information collected by civil society organisations documents the persistence and proliferation of this policy. The inconsistency between the French dismantlement and return decisions and fundamental human rights has been also highlighted by several European and international human rights bodies, such as recent decisions of the European Committee of Social Rights and the Council of Ministers of the Council of Europe, which charge French authorities with contravening the European Social Charter by their disproportionate and discriminatory nature since they targeted 'the Roma community'.

2013 has been officially proclaimed at EU level as 'the European year of the Citizens', having as one of its core objectives to enhance awareness and knowledge of citizens' rights and responsibilities attached to Union citizenship, "*in order to enable citizens to make full use of their right to move and reside freely within the territories of the Member States*".² It is therefore timely to examine the state of affairs with respect to French policy on Roma evictions and expulsions and assess the ways in which the controversy has developed and can be understood from the perspective of citizenship of the Union. How has European citizenship contributed to the origins and subsequent developments of the French Roma affair?

One of the central elements since the beginning of these episodes has been the ways in which the exercise of the freedom to move (crossing EU internal borders of member states) has brought Romanian and Bulgarian nationals of Roma origin under the umbrella of the EU legal status of citizens of the Union, and therefore opened a series of supranational freedoms and spheres of protection beyond the discretion of all EU member states' national governments. The *locus* of responsibility over those citizens exercising free movement from Romania and Bulgaria towards France was no longer in the exclusive hands of domestic authorities, but also of EU institutions entrusted with the duty to protect *all* nationals of EU member states and secure their fundamental freedoms as citizens of the Union in a non-discriminatory fashion (independently of their EU member state nationality and ethnic/racial background) against any interference or derogations by national governments and authorities.

Since its inception, the French affair has dealt with a key question: Whose responsibility are those Romanian and Bulgarian citizens of Roma origin exercising their right to free movement by moving to France? The way in which the controversy has evolved since 2010 reveals a set of evolving strategies amongst the various institutional actors primarily aimed at shifting responsibilities between EU and national realms and evading their duties to protect Romanian and Bulgarian EU citizens. European Roma politics have moved from

¹ Directive 2004/38/EC of the European Parliament and the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the member states amending Regulation (EEC) No. 1612/68 and repealing Directives 64/221/EEC, 68/360/EEC, 72/194/EEC, 73/148/EEC, 75/34/EEC, 75/35/EEC, 90/364/EEC, 90/365/EEC and 93/96/EEC, OJ L 158/77, 30 April 2004; see S. Carrera, "What does free movement mean in theory and practice in an enlarged EU?", *European Law Journal*, Vol. 11, No. 6, November 2005, pp. 699-721.

² Decision No. 1093/2012 on the European Year of Citizens (2013), 21 November 2012, OJ L325/1, 23.11.2012. Refer also to European Commission, Report on progress towards effective European Citizenship 2011-2013, COM(2013)270 final, 8.5.2013; and European Commission EU Citizenship Report 2013, EU citizens: your rights, your future, COM(2013)269 final, 8.5.2013, Brussels. See also <http://europa.eu/citizens-2013/>.

highly visible and politicised reactions by the European Commission, first centred on ensuring a correct application of EU free movement law and European citizenship freedoms against a disobedient member state, and then moved towards the development of an EU framework coordinating member states' national strategies focused on the integration of non-mobile EU Roma citizens. The successive French governments of Sarkozy and Hollande have continued the evictions and expulsions presented in different legal and political guises in order to prevent direct or obvious clashes with EU citizenship and free movement laws and the European Commission. This has been accompanied by bilateral cooperation between France and Romania in the form of an agreement concluded outside the EU framework and devoted to an experimental project seeking to foster the 'reintegration' of Romanian families of Roma origin by granting those having exercised their freedom to move to France and being returned back to Romania a financial retribution in the form of 'aid for reintegration' to foster their economic and societal reinsertion there.

This has meant a policy transition or paradigm shift in policy priorities leading to an ethnicisation of citizenship of the Union. The ethnicity and imagined nomadic lifestyle of Roma seems to have taken precedence over their actual nationality and citizenship. (Re)integration has been presented and framed as *the* solution to prevent mobile Roma from exercising their European citizenship mobility freedoms and being treated as foreigners subject to eviction and return to their home country. The end result has been that the actual onus of responsibility has fallen on the Roma themselves via the prioritisation and promotion of Roma integration policies calling these people to be (re)integrated in their national societies. Integration has been designed as a policy mechanism for passing the buck over to the Roma themselves as regards the reasons for and consequences stemming from their discrimination, exclusion and negation of EU citizenship rights and freedoms.

Section 1 of this paper looks at the roots and origins of the 2010 French Roma affair. It illustrates the sequence of events that constructed and led to the emergence of the controversy, and the ways in which the allocation of responsibility between EU and national governmental offices for Roma citizens constituted a central component since the initial incident. Section 2 presents the state of affairs of evictions and expulsions of Romanian and Bulgarian of Roma origin since 2010. It also underlines the main concerns expressed by civil society organisations and supranational human rights bodies on the nature and effects of these French policies.

Section 3 delineates the various EU responses and strategies adopted, in particular by the European Commission and France, since the end of 2010. It is argued that while the Commission has continued to monitor the correct transposition of the Citizens Directive 2004/38 and the procedural guarantees against expulsion of EU citizens in the French legal system, the political priorities have moved towards the EU Framework for National Roma Integration Strategies. In addition, France has constantly reframed its national legal framework to the letter of EU free movement law, such as prohibiting any express reference to policies targeting the Roma. It has also argued that there is not a direct link between the current evictions and expulsions policies, but there is no evidence showing that it has modified its daily administrative procedures and enforcement practices focused on evictions and repatriations of Romanian and Bulgarian nationals of Roma origins. France concluded a bilateral agreement with Romania in 2012 which signals the persistence of the rationale behind the 2010 affair, as it aims to induce Romanian nationals of Roma origin to return to and reintegrate in Romania.

Section 4 shows the relationship between the priority given to integration and reintegration policies and the non-discrimination principle adopted by national and EU institutions in the scope of citizenship of the Union. It is argued that the fundamentals of citizenship of the Union are being transformed. The ethnicity of certain Romanian and Bulgarian nationals is being put at the forefront. The policy priorities seem to discourage Roma from exercising their freedom of movement or leaving their country. And those who have already moved are considered as foreigners, nomads or potential criminals and thus undeserving of EU citizenship protection. These discourses have been used at various official levels to justify control policies aimed at 'moving them back' and developing their national socio-economic ties through re-integration or reinsertion in their countries of origin. Our argument is that the paradigm shift towards reintegration in European Roma politics conflicts with the duty not to discriminate on the basis of nationality and ethnicity against those wishing to leave their own country and settle/reside freely in another member state citizenship of the Union.

1. The French 2010 Roma affair: The origins of the controversy

The affair started on 30 July 2010, when former French Prime Minister Nicolas Sarkozy delivered a speech in Grenoble. The discourse followed an episode of rioting after a young man was killed by the police during an armed robbery, and an attack on a police station in another French town by people labelled as ‘*gens du voyage*’ following the death of another man killed by the police for failing to stop at a road block.³ Sarkozy called for a “*war against traffickers and thugs*” and a policy reform to improve “*the fight against irregular immigration*”, and prevent “*abuses of the free movement right*” and “*the uncontrolled establishment of Roma camps*”.⁴ He made reference to the existence of 539 “*illegal camps*” on French territory and announced a plan to dismantle them over a period of three months. The Declaration prepared the grounds for the next steps in the securitisation and criminalisation of the Roma, and the public visibility of Romanian Roma deportations, in France.⁵

The removal of camps started in the beginning of August 2010.⁶ An official statement was issued by the former immigration minister, Eric Besson, 30 August 2010, stating that 128 “*illegal settlements*” had been closed and 979 Bulgarian and Romanian citizens had been returned since the end of July (828 ‘voluntarily’ return and 151 forcibly).⁷ The French authorities claimed that a ‘voluntary’ and ‘humanitarian’ repatriation was being carried out in return for a compensation of €300 per adult and €100 per child under the concept of ‘aid to return’ for those ‘voluntarily’ willing to be repatriated.⁸ Also, in order to prevent Romanian and Bulgarian nationals from returning to France, the recipients of this compensation were requested to sign a written form, accompanied by their fingerprints, that they would not receive this money a second time should they return to France.

Sarkozy’s announcements met with heated reactions from various national and supranational offices, including those at the highest EU institutional levels.⁹ The European Parliament was amongst the first to condemn the French policy. In a Resolution of September 2010, “on the expulsion of Roma from France”, it called on France to immediately suspend the expulsions,¹⁰ and acknowledged that deportations had been taken place in a context of public statements by French government leaders suggesting delicate linkages between Roma and criminality,¹¹ considering Roma groups as a community constituting a “threat to public order and safety” and “a burden on the social assistance system”. The Resolution also underlined that the measures violated EU law due to their discriminatory nature on the bases of race and ethnicity, and criticised

³ Refer for instance to “Une gendarmerie attaquée à la hache dans le Loir-et-Cher”, *Le Monde*; 16.7.2010, See also “La nuit a été plus calme à Grenoble, quadrillée par les forces de l’ordre”, 17.7.2010.

⁴ See www.lemonde.fr/politique/article/2011/07/30/ce-que-nicolas-sarkozy-a-fait-du-discours-de-grenoble_1553877_823448.html

⁵ H. Barbulescu (2012), “Constructing the Roma People as a Societal Threat: The Roma Expulsions in France”, *European Journal of Science and Theology*, Vol. 8, Supplement 1, pp. 279-289, June. See also O. Parker (2012), “Roma and the Politics of EU Citizenship in France: Everyday Security and Resistance”, *Journal of Common Market Studies*, Vol. 50, No. 3, pp. 475-491. On the ways in which the Romanian Roma expulsions became a new symbol in French policies, see S. Bertossi (2010), “France and Deporting the Roma: How did we get there?”, Real Instituto Elcano, ARI 146/2010, Madrid.

⁶ See <http://www.bbc.co.uk/news/world-europe-10892669> and <http://www.bbc.co.uk/news/world-europe-10955717>

⁷ Ministre de l’Immigration, de l’intégration, de l’identité nationale et du développement d’été, E. Besson, a propos de l’évacuation des campements illicites, 30 August 2010. See also 27 August 2010, Press Release by French Minister Eric Besson explaining the measures taken by the French authorities and their compatibility with EU law.

⁸ On the ways in which France has developed since 2007 a complex procedure of ‘humanitarian’ returns that involves the granting of a financial retribution and its human rights implications, see C. Cahn and E. Guild (2008), “Recent Migration of Roma in Europe”, study commissioned by the OSCE High Commissioner on National Minorities and the Council of Europe Commissioner for Human Rights, 10 December 2008, p. 47 and p. 48.

⁹ Refer to <http://www.guardian.co.uk/world/2010/aug/24/france-roma-expulsions-backlash>

¹⁰ European Parliament, Motion for a Resolution on the expulsion of Roma from France, 0312/2010, 9.9.2010.

¹¹ The Resolution stated in Paragraph 5: “Is deeply concerned, in particular, at the inflammatory and openly discriminatory rhetoric that has characterised political discourse during the repatriations of Roma, lending credibility to racist statements and the actions of extreme right-wing groups.”

the late and limited response by the European Commission as guardian of the Treaties, most notably at times of verifying the consistency of the French measures with EU directives on non-discrimination and freedom of movement.¹²

The compatibility of the French measures with EU law became a specific issue of concern for the European Commission, in particular for the then newly established Directorate General for Justice, Citizenship and Fundamental Rights led by Vice-President of the Commission Viviane Reding. A Joint Information Note on “The Situation of Roma in France and in Europe” issued on 1 September 2010, by Reding and Commissioners Laszlo Andor (Employment, Social Affairs and Inclusion) and Cecilia Malmström (Home Affairs), to the College of Commissioners addressed the legality of the practices from an EU law viewpoint. The Note underlined that France would be in violation of EU law if the measures had targeted a certain group on the basis of nationality, race or ethnic origin. It appears that during a closed-door, high-level meeting with former French ministers Eric Besson and Pierre Lellouche, Commissioners Reding and Malmström received political assurances that specific ethnic groups had not been targeted by the French measures.

These assurances, however, were blatantly contradicted with the leak of a governmental document to the media by *le Canard Social* on 9 September 2010,¹³ in which the French Ministry of Interior called upon the *préfet* (state representatives in departments/regions) to give priority to the “*campements illicites des Roms*” as the primary objective of the evictions and expulsions policy.¹⁴ Following the disclosure of this document, a new Circular was released on 13 September 2010 by the French Minister of Interior deleting any express reference to Roma.¹⁵ This came along with a controversial statement by the French Secretary of State for European Affairs, Pierre Lellouche, who said in response to the pressures received from the European Commission that the only “*Guardian of the Treaties is the French People*”.¹⁶

It did not take long for the Commission to react. In a speech delivered 14 September 2010,¹⁷ Vice-President Reding qualified the situation in France as a “*disgrace*” and as “*deeply disturbing*” and added:

...people are being removed from a Member State of the European Union just because they belong to a certain ethnic minority. This is a situation I had thought Europe would not have to witness again after the Second World War. But I make it very clear my patience is wearing thin: enough is enough. No Member State can expect special treatment, especially not when fundamental values and European laws are at stake. This applies today to France. *This applies equally to all other Member States, big or small, which would be in a similar situation. You can count on me for that.* (emphasis added).

Reding confirmed that she was firmly convinced of the necessity to start infringement proceedings against France for a discriminatory application of the Citizens 2004/38 Directive and the lack of transposition of its

¹² Paragraphs 11 and 12 of the Resolution.

¹³ See <http://www.lecanardsocial.com/ArticleFil.aspx?i=182>

¹⁴ The Circulaire IOC/K/1016329/ J du 24 juin 2010 of the Ministry of Interior titled ‘*Evacuation des Campements Illicits*’, issued the 5 August 2010, acknowledged the objective set by the President of the Republic the 28 July 2010 to evict ‘illicit camps’ or ‘*campements illicites*’ at 300 illicit camps or establishments in a period of three months, “*en priorité ceux des Roms*”. It was said that “*Il revient donc, dans chaque département, aux préfets d’engager, sur la base de l’état de situation des 21 et 23 juillet, une démarche systématique de démantèlement des camps illicites, en priorité ceux de Rome...Par ailleurs, il convient évidemment d’empêcher l’installation de nouveaux campements illicites des Roms* ». This was accompanied by a Télégramme 30 juillet 2010 which stated that “*..., je vous remercie de veiller à m’informer préalablement (au minimum 48 heures auparavant) de toute opération d’évacuation revêtant un caractère d’envergure, ou susceptible de donner lieu à un écho médiatique.* »

¹⁵ <http://www.lefigaro.fr/assets/pdf/circulaire-hortefeux.pdf>

¹⁶ <http://www.google.com/hostednews/afp/article/ALeqM5jlvlxEBvmuOKyQ49CTY1WZvkQSVw>

¹⁷ Statement by Viviane Reding Vice-President of the European Commission responsible for Justice, Fundamental Rights and Citizenship on the latest developments on the Roma situation Brussels, 14 September 2010, Midday briefing in Press Room, Speech/10/428, 14.9.2010 (http://www.youtube.com/watch?v=4eccgXi_D3M).

procedural and substantive guarantees in cases of expulsions of EU citizens.¹⁸ The Vice-President asked the French authorities for an immediate and swift explanation of the matter.

Reding's speech had a strong impact on the European Council summit of 16 September 2010 in Brussels, which was originally intended to focus on the Union's external relations with strategic partners. The Roma controversy took over the debates. It was reported that Sarkozy accused the Commission of insulting France,¹⁹ considering Reding's words as outrageous and embarrassing, and alluding to the effects her comments had triggered at international and national levels,²⁰ with the issue being the subject of all discussions in France, in streets and synagogues. Sarkozy said: "*Je suis seulement venu parce qu'elle (Mme Reding) s'est excusée, après avoir dit à Barroso que je ne viendrais pas si elle ne s'excusait pas*". It appears that Barroso did not agree to apologise for Reding's words: "*The loud noises from the French president that came in response to Barroso's attack were audible from the corridor*." During these closed-door debates, Sarkozy indicated that France intended to continue to dismantle the homes of Roma and return them to Romania and Bulgaria.²¹

The Commission decided on 29 September 2010 to issue a letter of formal notice to France requesting the full transposition of the Citizens Directive 2004/38, stating that unless draft transposition measures and a detailed schedule was provided by 15 October 2010, infringement proceedings would be opened by the Commission against France.²² It was reported that right before midnight (15-16 October 2010) France communicated to the Commission its intention to align its national legislation with EU law on free movement of persons.²³ "*I think this is a positive move: France has answered our ultimatum*," Reding told the French news agency AFP. In official press release issued on 19 October 2010, Commissioner Reding addressed the recent developments concerning the respect for EU law as regards the situation of Roma in France.²⁴

The Commission concluded here that "*France has thus done what the Commission had asked for*" and therefore the decision was taken not to pursue the infringement procedure against that country decided by the College of Commissioners, 29 September 2010. The press release, however, stated: "*The European Commission will closely watch over the full implementation of the commitments made by France, in the interest of EU law and EU citizens*." Reding also announced the Commission's intention to focus on the "economic and social integration of Roma", examining how EU funds could help to further strengthen national measures for Roma integration and the presentation of an EU Framework for national Roma strategies by April 2011. The Commission further explained that while the dimension on substantive and procedural guarantees was covered by the French letter, there was still another one open, that of discrimination. Reding insisted on *France 24* "*que le dossier de la discrimination "n'[était] pas clos" et*

¹⁸ See also her declarations to the BBC (<http://www.bbc.co.uk/news/world-europe-11437361>).

¹⁹ <http://www.euractiv.com/future-eu/summit-sees-sarkozy-barroso-clas-news-497878> See also <http://www.euractiv.com/future-eu/eus-reding-loses-patience-france-news-497770>

²⁰ <http://www.economist.com/node/17103993> See also <http://www.liberation.fr/societe/01012289849-l-onu-juge-la-politique-francaise-avec-les-roms-preoccupante>

²¹ http://www.nytimes.com/2010/09/17/world/europe/17union.html?_r=0

²² 29 September 2010 – Press Release, European Commission assesses recent developments in France, discusses overall situation of the Roma and EU law on free movement of EU citizens. In the meantime, on the 7 October 2010 another issue reached the media attention, the publication of a database by French gendarmerie covering Roma http://www.lemonde.fr/politique/article/2010/10/08/le-gouvernement-embarrasse-apres-la-revelation-d-un-fichier-illegal-sur-les-roms_1422196_823448.html and <http://libertes.blog.lemonde.fr/2010/10/07/le-fichier-des-roms-du-ministere-de-linterieur/>

²³ The Press Release stated that following the Commission request, the French authorities had submitted detailed documentation, including draft legislative measures and a credible calendar for putting these procedural safeguards required by the Citizens Directive into French national law by early 2011.

²⁴ Statement by Viviane Reding, Vice-President of the European Commission, EU Commissioner for Justice, Fundamental Rights and Citizenship, on the recent developments concerning the respect for EU law as regards the situation of Roma in France, MEMO/10/502, Brussels, 19 October 2010.

avait réfuté l'idée d'un "compromis",²⁵ and that while the Commission had clear evidence of the incorrect application of the Citizens Directive, it had no objective, material or concrete evidence showing the discrimination dimension *"and we will request more information about this issue"* from France.

Sarkozy declared to be *"très heureux"*²⁶ and that *"la raison ait triomphé"*.²⁷ On 3 November 2010, Eric Besson reported to the French National Assembly that in 2009 the 'voluntary return' of Romanians and Bulgarians in irregular situations had cost €8.2 million (€7.5 million in 'aid to humanitarian return' and €0.7 million for assisting in re-integration) affecting a total of 11,000 beneficiaries.²⁸ Interestingly, he emphasised that during 2010 there had not been a real rupture with *the kind* of policy implemented, but rather an acceleration of the expulsion of 'nomad Romanians' in irregular situations during August and September. Besson also clarified that France had accepted the Commission's request, but that in his view, the main issue had rather concerned the non-transposition of a number of formalistic elements envisaged in the 2004 Directive into French national law, to which France replied with a well-founded legal response. He stated that *"we did not have the need to do it because our general principles of law required [these guarantees] already, such as for example, the individual treatment of cases"*. But in order to show that the French government was *"willing to establish a calm relationship with the Commission"*, he said that they had accepted to *"faire un geste"* and formally transposed into French legislation.

What has happened since the end of 2010 as regards the evictions and expulsion practices by France (section 2), and what have been the responses by the Commission and the member states concerned (section 3)?

2. The state of Roma evictions and expulsions France 2010-13

Civil society organisations have actively followed up and monitored the effects of evictions and returns by French authorities since 2010. Publicly available official statistical data on evictions and expulsions of Romanian and Bulgarian nationals are scarce and therefore are not sufficient to allow us to provide a full and accurate picture of the state of Roma evictions and expulsions in France. That notwithstanding, reports and studies from non-governmental organisations have shed new light on the scope and latest developments of the evictions and returns during the last phases of the Sarkozy government as well as under the current administration of François Hollande since May 2012.

Several civil society organisations have argued that illicit evictions and expulsion policies of EU Roma citizens have not only continued but have even accelerated during 2011 and 2012. The European Roma Rights Centre (ERRC) reports, for example, that in 2011, more than 7,400 Romanians received an expulsion order and 1,250 Bulgarians, and that during the first three months of 2012 almost 2,700 expulsion orders '*Obligations de Quitter le Territoire Français*' (OQTF) were issued to Romanians and 340 to Bulgarians.²⁹ The ERRC has also pointed out the ways in which Roma settlements continue to be dismantled under Hollande's government *"and others expelled in the same summary and illegal fashion as under his predecessor Nicolas Sarkozy"*.³⁰

According to statistical data provided to the author of this paper by the Permanent Representation of Romania to the European Union in Brussels, the total number of forced expulsions (OQTF) of Romanian nationals by France recorded by the Romanian Border Police has systematically increased since 2010 as

²⁵ <http://www.france24.com/fr/20100929-commission-europeenne-menage-france-dossier-roms-procedure-infraction-transposition-directive-discrimination>

²⁶ <http://www.france24.com/fr/20101019-procedure-infraction-france-commission-europeenne-machine-arriere-garanties-suffisantes-roms-expulsions> See also <http://www.euractiv.com/enlargement/french-expulsions-aimed-romanian-news-499461>

²⁷ <http://www.france24.com/fr/20101019-procedure-infraction-france-commission-europeenne-machine-arriere-garanties-suffisantes-roms-expulsions>

²⁸ Eric Besson, French National Assembly, Thirteenth Legislature, Regular Session of 2010-2011, Verbatim Report, Session of Wednesday (http://www.assemblee-nationale.fr/13/cr/2010-2011/20110039.asp#INTER_13).

²⁹ <http://www.errc.org/index>

³⁰ <http://euobserver.com/opinion/117366>

follows: 1,446 returned persons in 2010, 1,931 in 2011 and 2,010 forcibly repatriated persons in 2012. From January to April 2013, 715 persons were forced to return to Romania. Furthermore, while on the basis of this data it is not possible to show that these Romanian nationals were in fact ‘Roma’, interviews conducted for the purposes of this paper, however, confirm that an overwhelming majority of these people were indeed of Roma origin.³¹ To this we need to add repatriation practices labelled in French immigration law as ‘voluntary or humanitarian return policy’, which consisted in the granting of €300 to Romanian and Bulgarian nationals to return to their countries of origin. This policy was criticised on grounds of not being truly ‘voluntary’ and mainly targeting Romani people from Romania and Bulgaria.³² The data provided by the Romanian Border Police also demonstrates an increasing number of voluntary repatriations carried out by the French authorities of Romanian nationals since 2010. In 2010, there were 4,868 persons voluntarily returned to Romania; in 2011, 6,735 voluntarily returned and in 2012, the number grew to 8,257.³³

The French policy on expulsions cannot be understood, and should not be read separately from its policy on evictions and “*dismantlement of illicit camps*” affecting EU Roma citizens. According to the European Association for the Defence of Human Rights (AEDH), despite the original political promises, the current socialist French government has developed a policy “*as destructive and negative as the preceding one*”. Estimates provided by the AEDH for the year 2012 and first semester of 2013 show that evictions of Romanian and Bulgarian nationals of Roma origin have not only continued during 2012 and 2103, but they have also progressively increased.³⁴ Some 11,803 persons were obliged to leave their place of living, 80% of which were by forced eviction and 9% had to leave their homes following a fire, flooding or attacks by neighbours in 2012. Moreover, during the first semester of 2013, 4,152 persons were obliged to leave their homes, 2,873 following forced eviction and 1,007 following a fire or aggression.

A joint press release issued on 9 April 2013 by the AEDH and the French League for Human Rights (LDH) condemned this situation,³⁵ and emphasised how this proves not only a complete absence of change in the French policy but also its reinforcement.³⁶ Similar to the views expressed by AEDH and LDH, the European Roma Rights Centre pointed out the ways in which Romani settlements continue being dismantled under Hollande’s government “*and others expelled in the same summary and illegal fashion as under his predecessor Nicolas Sarkozy*”.³⁷ Amnesty International (AI) has also been vocal on the continuation of the French policy on Roma evictions. In its Report “*Chased Away: Forced Evictions of Roma in Ile-de-France*” of November 2012,³⁸ AI documented the ways in which many Roma families living in informal settlements find themselves homeless after an eviction, as there are no alternative accommodations being offered, and

³¹ This has been also confirmed by a recent article published by the International Herald Tribune, “French promise of change for Roma meets reality”, 4 June 2013.

³² See S. Latraverse (2012), *Report on Measures to Combat Discrimination: Directives 2000/43 and 2000/78, Country Report France 2011*, European Network of Legal Experts in the Non-Discrimination Field (www.non-discrimination.net). Latraverse highlights how “*In 2009, the HALDE (High Authority against Discrimination and for Equality) concluded that the French government’s policy and transitory regime targets Romanian and Bulgarian Roma and is as such discriminatory on the ground of race and origin. Romanian and Bulgarian Roma do not benefit from rights of other citizens of the European Union, and they are denied access to rights granted to other migrant populations, some of which are protected under Directive 2000/43 (social security, social protection, education, access to goods and services). The Roma population is the most controlled, with the less support and is the only migrant population which does not benefit from a policy to insure its access to rights*”, page 155. Refer also to European Roma Rights Centre (2012), European Roma Rights Centre Written Comments concerning France, for consideration by the European Commission on the Transposition and Application of the Race Directive and on the Legal Issues Relevant to Roma Integration, p. 6 (<http://www.errc.org/index>).

³³ Several efforts were made by the author of this paper to contrast and double check this statistical data with the Permanent Representation of France before the EU in Brussels, yet no response has been so far received to the request.

³⁴ Refer to <http://www.aedh.eu/2013-First-quarter-Census-of.html> See also <http://www.aedh.eu/?lang=en>

³⁵ <http://www.aedh.eu/Census-of-forced-evictions-from-1908.html>

³⁶ http://www.lemonde.fr/societe/article/2013/02/06/pres-de-12-000-roms-evacues-de-leurs-campements-en-2012_1828037_3224.html

³⁷ <http://euobserver.com/opinion/117366>

³⁸ Amnesty International (2012), *Chased away: Forced evictions of Roma in Ile-de-France*, London: UK.

how forced evictions exacerbate the extremely poor living conditions of these people.³⁹ The damaging effects over the right to reside in a second member state envisaged in EU citizenship law have been therefore well documented.⁴⁰

That notwithstanding, the current French Minister of Interior Manuel Valls has reiterated the necessity to continue with the previous evictions and expulsions policy.⁴¹ An important change in French policy, however, has been the realisation that the above-mentioned ‘aid to voluntary return’ policy was largely ineffective. In an interview to *Le Parisien* Valls stated:⁴²

It was a system with perverse effects. These persons made several *allers-retours* profiting from this sum! We have maintained the aid limited to €50 for adults, and €25 for minors, in order to improve their return. At the same time, we have financed 80 projects in Romania in order to improve the living conditions on the ground. But Romania must use first the European structural funds towards this population.⁴³

Valls also issued a Press Release following the publication of the above-mentioned AI Report the 12 March 2013, offering a number of comments in light of Amnesty’s work especially in what concerns the conditions under which the evictions from ‘illicit camps’ are taking place.⁴⁴ It underlined the Government’s disagreement with Amnesty’s report, particularly concerning the argument that these principles of action are incompatible with the provision of adequate alternative accommodation. Valls expressed his regret over the material mistakes in the AI report, in particular the description of certain evacuation operations.⁴⁵

The concerns raised by civil society organisations have been however echoed by international monitoring human rights bodies, such as the European Committee of Social Rights of the Council of Europe following collective complaints against France, which monitors member states’ compliance with the European Social Charter (ESC).⁴⁶ The question was the extent to which the French practices were in compliance with the ESC. The Committee based its judgements on the wealth of information provided by some of the above-mentioned NGOs.⁴⁷ These demonstrated how the French dismantlement and return decisions were not

³⁹ For another illustration of the practical deficits characterizing the French eviction policy refer to “*Les Roms son comme Nous, ils ont besoin de lumiere*, Mediapart, 13.05.2013 (<http://www.mediapart.fr>).

⁴⁰ Human Rights Watch (2011), France’s Compliance with the European Free Movement Directive and the Removal of Ethnic Roma EU Citizens, A Briefing Paper submitted to the European Commission (July 2011), published in September (www.hrw.org).

⁴¹ <http://www.lefigaro.fr/flash-actu/2012/09/11/97001-20120911FILWWW00345-roms-la-france-prend-sa-part-valls.php>

⁴² <http://www.leparisien.fr/politique/valls-les-demantelements-de-camps-roms-se-poursuivront-14-03-2013-2640169.php>

⁴³ For a critique of Valls’ declaration by civil society organisations see <http://www.rtl.fr/actualites/info/politique/article/pour-valls-les-roms-ne-souhaitent-pas-s-integrer-en-france-7759508042>

⁴⁴ <http://www.immigration.interieur.gouv.fr/Info-ressources/Actualites/Communiqués/Rapport-d-Amnesty-International>
The Press Release stated that “The expulsions have been implemented under two main principles. First of all, and it is the rule under a rule of law system, that of the application of judicial decisions requesting the expulsion of occupied land illegally. The expulsions have also taken place in order to ensure the security of the persons living in the camps. The conditions of live can be particularly dangerous and represent a threat to public security and public health, especially for minors.”

⁴⁵ According to the Press Release, it is necessary to remind that the préfets implement the inter-ministerial circular respecting all its provisions, especially in what concerns the diagnosis of the sanitary and social circumstances surrounding an eviction, and the search for solutions of alternative accommodation, and alluded to the situation where the *dispositifs d’urgence* are saturated, and in other occasions the persons refuse alternative accommodation.

⁴⁶ http://www.coe.int/t/dghl/monitoring/socialcharter/ECSR/ECSRdefault_en.asp The Committee is a body entrusted with the competence to decide whether there has been a violation of the Charter. Its views are not legally binding on States, however they constituted ‘authoritative interpretation’ of treaty obligations which are binding upon Member States.

⁴⁷ Reference was made to Collectif National Droits de l’Homme Romeurope, Rapport 2010-2011, “*Les Roms, boucs-émissaires d’une politique sécuritaire qui cible les migrants et les pauvres*”, February 2012, pp.17-18).

founded on an individual examination of their personal circumstances, did not respect the proportionality principle and were discriminatory in nature since they targeted ‘the Roma community’.⁴⁸ The Committee declared the French evictions policy to be in contradiction with the ESC, in particular the human dignity of the Roma of Romanian and Bulgarian origin concerned.⁴⁹

The Committee of Ministers followed up the Committee’s Decisions addressing specific recommendations to the state in question found to be in non-compliance with the ESC.⁵⁰ In its Resolution CM/ResChS(2013)1 European Roma and Travellers Forum (ERTF) against France, Complaint No. 64/2011 of 5 February 2013, the Committee of Ministers concluded: “*The operations carried out during the period concerned by this complaint nonetheless had the same characteristics as those that took place in the earlier period*” in France. The violation of the proportionality principle was based on “*the burden of coverage of the persons concerned by the social assistance system would have to be excessive, or even unreasonable, for an expulsion measure to be necessary, so as to relieve the State of this burden.*”, which was deemed not to be the case. The Committee of Ministers concluded that French policies continued constituting indirect discrimination and had a disproportionate impact on the Roma, in particular those originating from Romania and Bulgaria. It finally added that the conditions in which the forced evictions of Roma camp sites take place were inconsistent with human dignity and constituted a violation of the ESC.⁵¹

3. Assessing the European Commission and member states’ responses since 2010

Let’s now move back again to the end of 2010. As was explained in section 1, after the turf wars between the Commission and the French Government, France pronounced its agreement to comply with the request by Vice-President Reding to align its national legislation with the procedural and substantive guarantees envisaged in the Citizens Directive 2004/38 for cases of expulsions of EU nationals. What have been the main European Commission and member states’ responses since then? Three main lines of action can be broadly identified: First, the enforcement of EU free movement legislation; second, the integration of Roma in the scope of the EU framework of member states’ national strategies; and third, bilateral cooperation between France and Romania on reintegration of Romanian families of Roma origin. It is argued that these strategies have signified a paradigm shift in the EU’s political priorities from an enforcement-driven logic focused on ensuring France’s compliance with EU citizenship law and the non-discriminatory application of the free movement of person, towards one emphasising member states’ duties on the integration and reinsertion of Roma. What has this policy move actually meant from the perspective of shifting responsibilities over Romanian and Bulgarian citizens and more generally European Roma politics?

⁴⁸ *Centre on Housing Rights and Evictions (COHRE) v. France* (Complaint No. 63/2010, decision on the merits of 28 June 2011, §§35-55) and *European Roma and Travellers Forum (ERTF) v. France* (Complaint No. 64/2011, decision on the merits of 24 January 2012, §§126-135. *European Roma Rights Centre (ERRC) v. Bulgaria*, Complaint No. 31/2005, decision on the merits of 18 October 2006, § 53.

⁴⁹ It stated that “... with regard to their expulsions from sites where they have settled illegally, the situation of migrant Roma has not improved since its finding of a violation of Article 31.2...It therefore considers that the violation of Article E read in conjunction of Article 31.2 persists”. (Paragraph 81) Reference was made here to Commission Nationale Consultative des Droits de l’Homme, *Avis sur le respect des droits des « gens du voyage » et de Roms migrants au regard de réponses récentes de la France aux instances internationales*, 22 mars 2012, &54-55 ; Collectif National Droit de l’Homme Romeurope, *Rapport 2010-2011*, février 2012, pp. 17-18 ; Observatoire régional de sante d,Ile-de-France, *Situation sanitaire et sociale des ‘Roms migrants’ en d,Ile-de-France*, janvier 2012, p. 27.

⁵⁰ Khaliq and Churchill, ‘The European Committee of Social Rights’, in Langford (ed), *Social Rights Jurisprudence: Emerging Trends in International and Comparative Law*, New York: Cambridge University Press, 2008; See also; A. Nolan (2012), ‘Aggravated Violations’: Roma Housing Rights and Forced Evictions in Italy: Recent Developments under the European Social Charter Collective Complaints System, *Human Rights Law Review* 11:2, pp. 343-361.

⁵¹ In particular, Article E in conjunction with Article 31§2 ESC.

3.1 EU free movement law

Since the presentation by the French government of the roadmap for ensuring compliance with the Citizens Directive 2004/38 at the end of 2010, the Commission has reiterated on several occasions its intention to remain vigilant as regards the actual implementation of the legislative reform aligning French law with EU free movement legislation. The political decision was formally taken at that time, however, not to formally launch infringement proceedings before the Court of Justice of the European Union (CJEU) in Luxembourg against France for an alleged violation of citizenship of the union free movement rights and freedoms.

In a Press Release issued 2 August 2011 entitled “*Free movement: Determined Commission action has helped resolve 90% of open free movement cases*”,⁵² the Commission underlined how several events in 2010 had signalled important deficiencies with respect of procedural and substantive guarantees under the Citizens Directive in member states such as France. It also said that the Commission had taken action to ensure that “*all 27 Member States*” comply with the EU’s free movement rights. The Commission emphasised that it would closely monitor how those member states that announced the adoption of new implementing legislation would deliver on their commitments and would evaluate the application of the Directive. The implementation of the substantive and procedural safeguards against expulsions was still signalled as one of the most problematic issues of incorrect implementation. The results of this exercise are expected to appear in an upcoming Report to be published on the application of the Free Movement Directive to be submitted to the European Parliament and the Council, originally envisaged for the end of 2013, but which has been now postponed to 2014.⁵³

In an interview published by *Le Monde* in September 2012, Vice-President Reding stated that since the end of 2010 France has adopted its legislation to reinforce the procedural guarantees in cases of expulsion of EU citizens in line with European standards.⁵⁴ She also underlined that the evictions were “*to her knowledge*” subject to a previous judicial decision and that the individuals concerned were properly informed and the evictions are not taking place in mass. Reding highlighted that the policy focus was rather now on the integration of these people and the implementation of the French national integration strategy of Roma. Furthermore, as we will develop in section 4.1, the Commission’s current position finds that there is no link between the evictions and actual expulsions of Romanian and Bulgarian nationals of Roma origins by French authorities, and that the evictions fall outside the material scope of EU free movement law and henceforth its legal remit to act against France.

The responses by the Commission to the French policy and practices since the end of 2010 have been mixed and subject to several critiques. The academic literature has expressed concern that despite a brief war of words at the outset of the affair, no concrete enforcement measures were imposed by the Commission, nor was the case referred to the CJEU, despite the open legal questions raised by the French practices and sound civil society-based evidence showing their incompatibility with a well-established area of EU law.⁵⁵ Several scholarly contributions have comprehensively addressed the legality of the French evictions and expulsions in light of EU law, which falls outside the scope of this paper.⁵⁶ It is however necessary to acknowledge that

⁵² http://europa.eu/rapid/press-release_IP-11-981_en.htm

⁵³ Moreover the Press Release stated that “on 25 August 2010, Vice-President Reding said of the situation of the free movement rights of EU citizens: *‘It is clear that those who break the law need to face the consequences. It is equally clear that nobody should face expulsion just for being Roma.’* And continued “In the French case, the government adopted the legislative amendments required by the Commission to ensure compliance with the Free Movement Directive on 16 June, including the *safeguards that protect EU citizens against arbitrary expulsions or discriminatory treatment* (emphasis added).”

⁵⁴ http://www.lemonde.fr/europe/article/2012/09/01/viviane-reding-meme-en-crise-l-europe-n-est-pas-qu-un-marche_1754411_3214.html

⁵⁵ See H. O’Nions (2011), Roma expulsions and discrimination: The elephant in Brussels, *European Journal of Migration and Law*, Vol. 13, pp. 361-388. Refer also to Q. Bennett (2011), Please don’t be our guest: The Roma expulsion from France under European Union law, *Journal of International and Contemporary Law*, Vol. 40, pp. 219-245.

⁵⁶ Lhernoud, L’eloignement des Roms et la Directive 2004/38 relative au droit de séjour des citoyens de l’UE, 11, *Droit Sociale*, 2010, pp. 1024-1036. See also A. M. Korando (2012), Roma go home: The plight of European Roma, *Law and Inequality*, Vol. 30, pp. 125-147; E. Diana (2011-2012), Expulsion of the Roma: Is France violating EU freedom of

the question whether the French practices is in accordance with EU citizenship law is indeed not straightforward from a legal viewpoint.

A majority of EU officials interviewed for the purposes of this paper reiterated that the EU citizenship right of freedom of movement is not absolute or unconditional in nature. It is indeed a 'privilege' largely reserved to those who have sufficient resources not to become a 'disproportionate burden' on the receiving member state to which they move. It is true that any exception by national governments or authorities to EU citizenship freedoms must be interpreted strictly, and any restrictive or coercive measures must be taken in a non-discriminatory manner and on a case-by-case basis where the personal conduct of the individual "*represents a genuine, present and sufficiently serious threat affecting one of the fundamental interests of the society of the host Member State*".⁵⁷ Nonetheless, there are still some open questions as regards the ways in which these derogations are practiced at national levels and their legality in light of EU law. The French case is paradigmatic in this regard. As O'Nions (2011) has pointed out, it is not entirely clear the extent to which an EU citizen no longer respecting the residency conditions can be expelled legally, "*the principles seem clear but the absence of specific clarity on the question of expulsion remains a deficiency. It has enabled Member States to rely on a grey area to justify expulsions without formally demonstrating a specific threat*".⁵⁸

The governments of Sarkozy and Hollande have also implemented a strategy according to which national legislation has been accommodated to the letter of free movement law of the Union, but the practices and procedures on the ground seem to remain largely unchanged. As illustrated in sections 1 and 2 of this paper, the French authorities have confirmed on several occasions that despite the need to formally comply in its transposition into national law and to keep a "*serene relation with the Commission*",⁵⁹ the public intended goal of the French evictions and repatriation policy have not really changed since 2010. Rather, they have continued under different guises. According to a briefing analysis carried out by Human Rights Watch (HRW) submitted to the European Commission in July 2011, French law and practices appear to continue to violate EU citizenship law obligations and the newly enacted national law transposing the Citizens Directive 2004/38 has not solved the concerns that first led the Commission to intervene in the summer of 2010.⁶⁰ HRW signalled that "*the French authorities have continued to target Roma EU citizens for removal, often in conjunction with camp or squat evictions, in a way that amounts to unlawful discrimination under EU and human rights law*".⁶¹

A key legal question still remains: are Romanian and Bulgarian nationals of Roma origins those mainly and disproportionately targeted by the French current policy on evictions and returns? Indeed, the situation in France may be one where 'the letter of the law' (Law 2011-672 on Immigration, Integration and Nationality of 17 June 2011)⁶² can well be in accordance with the Citizens Directive 2004/38, but there are still a number

movement and playing by French rules or can it proceed with collective Roma expulsions free of charge? Brooklyn Journal of International Law, Vol. 37:649-682; C. J. Chido (2011), Peril of Movement: Migrating Roma risks expulsion as EU member states test the limits of the free movement directive, Journal of International and Comparative Law, Vol. 20, pp. 233-254.

⁵⁷ European Commission, Communication on Guidance for better Transposition and Application of Directive 2004/38, COM(2009)313/4 final, 2.7.2009; refer also to European Commission, on the application of Directive 2004/38 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States, Report, COM(2008) 840 final, 10.12.2008. Also, no restrictive measures can be taken on merely preventive grounds. Court of Justice of the European Union, Case C-67/74 *Bonsignore*, paragraphs 5-7.

⁵⁸ See p. 371.

⁵⁹ Refer to footnote 29 above. Eric Besson, French National Assembly, Thirteenth Legislature, Regular Session of 2010-2011, Verbatim Report, Session of Wednesday (http://www.assemblee-nationale.fr/13/cr/2010-2011/20110039.asp#INTER_13).

⁶⁰ Human Rights Watch (2011), *France compliance with the European Free Movement Directive and the Removal of Ethnic Roma EU Citizens*, Briefing Paper submitted to the European Commission, July 2011, 28 September (www.hrw.org).

⁶¹ Ibid.

⁶² Loi n° 2011-672 du 16 juin 2011 relative à l'immigration, à l'intégration et à la nationalité, JORF n°0139 du 17 juin 2011 p. 10290. See in particular Article 39.

of important nuances regarding the administrative procedures and the informalities implementing it in a daily basis by the various relevant competent authorities as well as their disproportionate and discriminatory nature and compatibility with the Race Equality Directive 2000/43.⁶³

3.2 The EU Framework for national Roma integration strategies: Integration as the solution?

The political priorities of the Commission have instead gradually shifted since the beginning of 2011 towards the integration of Roma. A transition has taken place from the enforcement of EU citizenship (free movement and non-discrimination) laws angle towards the development and promotion of a soft-policy EU coordination mechanism of member states' integration policies of Roma. As explained in section 1, in concluding the political controversy with France over the Roma affair, Vice-President Redding announced the Commission's intention to centre the focus instead on the 'economic and social integration of Roma' and the presentation of an EU Framework for national Roma strategies. This move in policy priorities has been recently confirmed by the latest Commission 2012 Report on the Implementation of the EU Charter of Fundamental Rights published in May 2013,⁶⁴ which stated that the situation about "*developments in France*" has changed considerably in the last years with France modifying its law to guarantee full compliance with the free movement directive and adopting its national Roma integration strategy. On the basis of this strategy, the Report acknowledged, "*close cooperation and enhanced efforts on Roma inclusion is taking place with the active participation of France.*"

The EU Framework for National Roma Integration Strategies up to 2020 was formally adopted by the Commission in a Communication published in April 2011.⁶⁵ The Framework Communication aims at tackling the societal and economic challenges faced by "*EU's Roma population*". According to the Communication, "*it is a means to complement and reinforce the EU's equality legislation and policies by addressing, at national, regional and local level, but also through dialogue with and participation of the Roma, the specific needs of Roma*" regarding the following four key focus areas: equal access to employment, education, housing and healthcare.⁶⁶ The Framework Communication declares that "*To achieve significant progress towards Roma integration, it is now crucial to step up a gear and ensure that national, regional and local integration policies focus on Roma in a clear and specific way, and address the needs of Roma with explicit measures to prevent and compensate for disadvantages they face.*" The Commission proposed the design and adoption of national Roma integration strategies, which should include clear goals and (common, comparable and reliable) set of indicators, targeted actions and a special focus on the allocation of sufficient funding to put them into practice in line with the 'Common Basic Principles on Roma Inclusion'.⁶⁷ EU funding has been therefore placed at the heart of these actions.⁶⁸

The Framework Communication was followed by Council Conclusions where member states committed themselves to put it into practice.⁶⁹ After the presentation by all member states of their respective national

⁶³ Directive implementing the principle of equal treatment between persons irrespective of racial or ethnic origin, 2000/43, 29 June 2000, OJ L 180, 19.7.2000.

⁶⁴ European Commission, 2012 Report on the Application of the EU Charter of Fundamental Rights, COM(2013) 271 final, Brussels, 8.5.2013, p. 8.

⁶⁵ European Commission, Communication, An EU Framework for National Roma Integration Strategies up to 2020, COM(2011)173 final, 5.4.2011.

⁶⁶ Page 3 of the Communication.

⁶⁷ The principles were adopted by the Council Conclusions on the Inclusion of the Roma, 2947th Employment, Social Policy, Health and Consumers Affairs Council Meeting, Luxembourg, 9 June 2009, Annex.

⁶⁸ The Framework Communication stated that "*The implementation and success of national Roma integration strategies will very much depend on an effective and sufficient allocation of national resources. EU funding alone can certainly not solve the situation of Roma, but the Commission recalls that up to € 26.5 billion of EU funding is currently programmed to support Member States' efforts in the field of social inclusion, including to support efforts to help the Roma*", p. 9.

⁶⁹ The European Council Conclusions called for the rapid implementation of the Council Conclusions of 19 May 2011 on the EU framework for national Roma integration strategies up to 2020, "*as regards the preparation, updating or development of Member States' national Roma inclusion strategies, or integrated sets of policy measures within their*

integration strategies,⁷⁰ the Commission published another Communication titled *'National Roma Integration Strategies: A first step in the implementation of the EU Framework'* in May 2012.⁷¹ The Communication focused on the evaluation of member states' approaches and how structural requirements and funding were addressed in their strategies. It acknowledged that: *"Better integration of Roma is therefore both a moral and an economic imperative, which moreover will require a change of mindsets of the majority of the people as well as of members of the Roma communities."*⁷² The Communication also recalled that it is member states that have *"the primary responsibility and competences to change the situation of marginalized populations, so action to support Roma lies first and foremost in their hands"*.

The text clarified a bit further the objectives of the EU Framework in saying that its aim is *"to support"* member states in making a *"tangible difference to Roma people's lives"* in promoting change in their inclusion policy approaches. In the words of the Commission, *"legislation alone is not enough; Member States need to develop and implement an integrated and sustainable approach that combines efforts in different areas, including education, employment, health and housing"*.⁷³ The Communication identified as the upcoming priorities more efforts focused on effective implementation of the national strategies and actions plans, *"with specific measures commensurate with Roma inclusion targets, supported by a clear timetable and appropriate funding"*. It included a section on anti-discrimination and protection of fundamental rights, which broadly called upon member states to ensure that anti-discrimination legislation is effectively enforced in their territories and announced that the Commission will address legal issues with a particular emphasis on those aspects relevant to Roma integration in its reporting of the EU's Race Equality Directive foreseen before the end of 2013.⁷⁴

Yet, it is not clear the ways in which the Commission's follow-up strategy will be made and no concrete examples have been provided as to *how* member states have effectively addressed and implemented them on the ground. Moreover, it is striking to notice that discrimination issues of mobile EU Roma citizens are not a key component of the national strategies and the reporting actions by member states. The Framework does not seem to cover EU citizens of Roma origin exercising the freedom to move between EU member states. Civil society organisations have been also critical about the limits of the EU Framework. The ERRC has pointed out the lack of clear targets, its non-binding nature for member states and effective monitoring (and reporting requirements) in their implementation and, perhaps more worryingly, the lack of concrete steps to address Roma discrimination.⁷⁵ This has been the case also in relation to the French National integration Strategy, which was prepared without the involvement of civil society organisations, and it does not cover the discrimination and fundamental rights challenges inherent in the situation of Roma and EU citizens of Roma origin exercising their free movement rights.⁷⁶

broader social inclusion policies for improving the situation of the Roma, by the end of 2011". European Council Conclusions, 23/24 June 2011, EUCO 23/11, Brussels, 24 June 2011.

⁷⁰ These are available at http://ec.europa.eu/justice/discrimination/roma/national-strategies/index_en.htm. See also the factsheets by member states at http://ec.europa.eu/justice/newsroom/discrimination/news/120523_en.htm.

⁷¹ European Commission, *National Roma Integration Strategies: A first step in the implementation of the EU Framework*, COM(2012) 226 final, Brussels, 21.5.2012.

⁷² Ibid, p. 2.

⁷³ Ibid, p. 3.

⁷⁴ Page 18.

⁷⁵ <http://euobserver.com/opinion/117366> The ERRC has also stated *"The result is a strategy that cannot fail because its outcomes cannot be measured. But it is doomed to failure for the very same reason."*

⁷⁶ European Roma Rights Centre (ERRC), Written Comments by the European Roma Rights Centre concerning France, For consideration by the European Commission on the Transposition and Application of the Race Directive and on the Legal Issues Relevant to Roma integration; See also ERRC (2012), Factsheet: Roma Rights in Jeopardy, 16 February 2012. See the French government strategy for Roma integration, *"An Equal Place in French Society"*, which interestingly states that *"The French republican tradition, which involves a strict interpretation of the principle of equality, does not allow measures to be specifically targeted at a particular ethnic group. Article 1 of the Constitution of 4 October 1958 states that the Republic shall ensure equality before the law, without distinction in terms of origin, race or religion. The French government therefore firmly refuses to allow any differentiation of rights based on belonging to a community defined by its origin, and will continue to do so in the context of national, Community and*

3.3 The Franco-Romanian bilateral agreement: Reintegration or reinsertion as the solution?

The integration focus of the EU Framework has been also developed through an initiative between France and Romania covering issues specifically targeting mobile EU Roma citizens. These two countries have concluded a bilateral agreement on the reintegration or re-insertion of families of Romanian citizens belonging to the Roma minority. During a visit of the French Minister Valls to Romania the 12 and 13 September 2012, a bilateral agreement was signed between *l'Office français de l'Immigration et de l'Intégration* (OFII) and the Romanian Ministries of Labour, Family and Social Protection and of Interior, part of the wider French-Romanian Partnership.⁷⁷ The Agreement Preamble states that one of its objectives is a shared willingness “to better control the bilateral migratory fluxes” and act together to facilitate an improved social inclusion of Romanian citizens belonging to the Roma minority in economic development and public life in Romania.

The agreement has two main components: First, experimental projects on ‘reintegration in the country of origin’ which consists of granting an extra-financial aid (‘aid for reinsertion’) to a total of 80 families of Romanian nationals of Roma minority willing to return from France to Romania, and who are to be supported with a project of ‘economic and social reinsertion’ for setting up an enterprise and the provision of any necessary training for the specific needs to put it into practice in Romania; and second, the prolongation in the sending of Romanian police officers to France to assist French authorities in identifying Roma and ‘criminals’ and returning them to Romania and participate in joint patrolling and investigations teams “against those who exploit the Roma population in France”.⁷⁸

4. The Roma and European citizenship: Free movement vs. reintegration

How can this policy transition be read from the perspective of citizenship of the Union? In which ways has European citizenship contributed to the origins of the French Roma affair, or how has it affected its developments and current state of play? The analysis outlined in the preceding sections of this paper points to two main dimensions of relevance in the context of Union citizenship: First, the shifting of responsibilities between the EU and member states (section 4.1); and second, the integration-reintegration policy as the solution and the ethnicisation of European citizenship (section 4.2).

4.1 Shifting responsibilities: Whose citizens?

One of the core issues of contention since the first steps of the French Roma affair has been whose responsibility are Romanian and Bulgarian nationals of Roma origin exercising the free movement of persons, and therefore ‘whose citizens’ are those people subject to evictions and expulsions. The duty to protect underlying the state-individual citizenship relationship in liberal democracies, and the ways in which European citizenship has transformed that relationship by expanding and ‘supra-nationalising’ the set of institutional actors deemed to guarantee those citizenship freedoms beyond the nation-state, has constituted a central point of controversy in the affair.

As was examined in section 1, the French government did not wait long to allude to the failure of Romania and Bulgaria to integrate the Roma minority, calling on these two countries to assume their responsibilities

international processes”, page 1. Retrievable at http://ec.europa.eu/justice/discrimination/files/roma_france_strategy_en.pdf

⁷⁷ <http://www.immigration.interieur.gouv.fr/Info-ressources/Actualites/Communiqués/Deplacement-en-Roumanie-de-Manuel-Valls-et-Bernard-Cazeneuve> Accord-cadre entre l’Office Français de l’Immigration et de l’Intégration et le Ministère du Travail, de la Famille et de la Protection Sociale et le Ministère de l’Administration et de l’Intérieur de la Roumanie pour la mise en œuvre, à titre expérimental, d’une aide à la réinsertion des familles des citoyens roumains appartenant à la minorité rom, rentrés de France avec une aide au retour de l’Office Français de l’Immigration et de l’Intégration, 12 Septembre 2012.

⁷⁸ See Press Release, Romanian Ministry of Internal Affairs, “French authorities congratulated the Romanian police officers in Paris”, Bucharest, 30 January 2013, which reports the deployment of 25 police officers from Romania in Paris (http://www.mai.gov.ro/engleza/Home_eng/english.htm).

towards the Roma. Yet, the ‘whose responsibility question’ took different shapes and was reinterpreted during the closed-door debate at the European Council summit of 16 September 2010 in Brussels. Both France and Romania commonly argued in that meeting for the question of Roma evictions and expulsions to be considered a ‘European problem’, not a national or member state problem. Sarkozy even proposed to agree a common position by the Council that this constituted a ‘European issue’, which was supported by the Romanian President Basescu, who declared that the Roma who are “*nomads*” are a European, not a Romanian, problem. The reframing of the issue as requiring a European solution was still confirmed by the new French Minister of Interior, Valls, in an interview given in September 2012.⁷⁹

The ways in which EU Roma politics have influenced the framing of the Roma as a ‘European problem’ and a ‘transnational European minority’, that is a group without a clear national lobby or external homeland to defend its interests, presented as a separate nation without a state, has been studied by Vermeersch (2012, p. 1207).⁸⁰ He has rightly argued that some politicians have used it as an opportunity to encapsulate the Roma as a European ethnic minority, excluded from national populations. Most importantly, it has led to the conclusion that member states should not be blamed for the current problem nor can they be held responsible for solving it.⁸¹ It was indeed the mobility angle (the exercise of the Romanian and Bulgarian nationals of Roma origin of the physical freedom to move) that brought the issue within the remit of EU competence and in particular the Commission, which has been entrusted by the Treaties to guarantee the removal of obstacles and unlawful derogations standing in the way of citizens’ enjoyment of their rights and freedoms as envisaged in primary and secondary EU law. The link of the case with citizenship of the Union was underlined by the EU Fundamental Rights Agency (FRA), which stated that the case of Roma EU citizens settling in another member state raises questions as regards the meaning of EU citizenship and associated rights as a broad concept, and what citizenship of the Union means or should mean for these individuals.⁸²

The Commission’s responsibilities, and those of its DG for Justice, Fundamental Rights and Citizenship, therefore have been subject to detailed scrutiny since the beginning of the affair. As described above, the European Parliament and civil society organisations were amongst the first to call upon the Commission to act and assume its duties as guarantor of the Treaties and citizenship of the Union by launching infringement proceedings against France. The politicisation of the Commission in handling the case and the overall EU infringement proceedings have often been issues of concern, as challenges to its capacity to uniformly and vigorously ensure implementation of European rules by member states.⁸³ This has led the literature to devise innovative ways in which current enforcement mechanisms at EU level could be made more objective, solid and depoliticised.⁸⁴ More generally, and as Bigo has rightly argued, “...the issue is not the Roma people’s

⁷⁹ <http://www.lefigaro.fr/flash-actu/2012/09/11/97001-20120911FILWWW00345-roms-la-france-prend-sa-part-valls.php>

⁸⁰ P. Vermeersch (2012), “Reframing the Roma: EU Initiatives and The Politics of Reinterpretation”, *Journal of Ethnic and Migration Studies*, Vol. 38, No. 8, September 2012, pp. 1195-1212.

⁸¹ Vermeersch (2012) further argues: “The EU’s involvement thus represents not only the most recent phase in a longer and unfinished political debate about Roma in Europe; it also illustrates how the debate moves back and forth between different public policy contexts and political arenas and is therefore continually invested with new narratives, discursive arguments, ideas and meanings. These shifts create new public policy frames....the current EU appeals for increased attention entail the creation of a political space for the formation and contestation of new understandings of who the Roma are, what they need, and how they should be helped. In other words, *the EU has now joined a complex political game of framing and reframing the Roma.*” (p. 1196).

⁸² FRA (2009), “The situation of Roma EU citizens moving to and settling in other EU Member States”, November, Vienna.

⁸³ J. S. Gehring (2013), “Free Movement for Some: The Treatment of the Roma after the European Union’s Eastern Expansion”, *European Journal of Migration and Law*, 15, pp. 7-28. Gehring argues that “...the celebration of the Commission’s public rebuking of France highlights the Commission’s decrease in power within the EU over the last twenty years. The Commission’s failure to pressure states about the practical implementation of the law emphasizes the Commission’s relative weakness”, p. 20.

⁸⁴ See for instance M. Dawson and E. Muir (2011), “Individual, Institutional and Collective Vigilance in Protecting Fundamental Rights in the EU: Lessons from the Roma”, *Common Market Law Review*, 48, pp. 751-775; see also S. Carrera and B. Petkova (2013), “The potential of civil society and human rights organisations through third party interventions before the European Courts; the EU’s area of freedom, security and justice”, in M. Dawson, B. de Witte

attitude, or their integration, but is first of all that of the attitude of our governments as regards free movement of persons and human rights in Europe, with a debate that has the observance of their previous EU commitments at its core".⁸⁵ These struggles of authority between the Commission and the French national government about 'whose competence' have taken place along with others related to 'whose responsibility', where EU institutional instances have also played a role.

Section 3 of this paper has illustrated the transition in the policy priorities or actions by the European Commission in responding to the French evictions and expulsions of Roma. The original attention paid to ensuring the proper transposition of EU law on free movement into French national legislation moved to other terrains where the (re)integration of Roma communities became the political priority. The compatibility of French policies on evictions and expulsions with EU citizenship law appears to have lost ground towards ensuring member states' policies to ensure the integration of Roma communities in their domestic arenas. Vermeersch has also indicated that the Commission became aware of member states' attempts to exempt themselves from the responsibility and potential liability of the Roma affair in light of EU law. We argue that this might have actually constituted a decisive factor encouraging the Commission to focus mainly on the EU Framework for National Roma Integration Strategies, as an opportunity to give member states incentives to develop and finance *their* national efforts on Roma policies and bilateral cooperation. As raised above, it is quite telling that EU citizens of Roma origin exercising their freedom of movement are excluded from the personal scope of the EU Framework.

This has come at the same time that the Commission is arguing that it does not have the legal competence over issues related to access to housing and evictions. The official position of the European Commission has been indeed that the evictions fall outside the scope of EU law and its 'legal competence', as they are deemed as a 'purely internal situation' and no longer linked with expulsions. As stated in the interview given by Vice-President Reding to *Le Monde* in September 2012, "*The dismantlement of illegal and insalubrious camps remains a national question. There is no European law in this field.*" There seems to be a commonly accepted understanding at the Commission that France's actions in this area generally fall outside the Commission's competences, without duly acknowledging the close linkages amongst the effects that the French evictions and expulsion policies have not only from a free movement angle, but also from the perspective of non-discrimination and fundamental rights, and more generally from a citizenship of the Union viewpoint. This was actually observed by the Committee of Ministers of the Council of Europe, which highlighted that the Commission has since the end of 2010 taken a general position according to which the evictions of nationals of EU member states fall 'exclusively' within the jurisdiction of member states, and therefore their obligations under international law, such as those arising from the ESC.⁸⁶

It can be argued that by doing so the Commission may be indirectly renouncing its ownership over EU citizenship acts and claims of Romanian and Bulgarian nationals of Roma origins in exercising one of the most paradigmatic components of citizenship of the Union, i.e. the freedom to move. In order to prevent certain national governments from framing the issue as a prominently 'European problem', it appears that DG Justice of the Commission has instead focused its attention on certain incentives for member states to fulfil their obligations towards their own Roma citizens and better ensure their 'integration' in their national

and E. Muir (eds), *Judicial Activism at the European Court of Justice*, Edward Elgar, Cheltenham, pp. 233-263. See also S. Carrera and A. Faure-Atger (2010), *L'affair des Roms: A Challenge to the EU's Area of Freedom, Security and Justice*, CEPS Paper in Liberty and Security in Europe, CEPS, Brussels.

⁸⁵ D. Bigo (2013), "When Montesquieu goes transnational: The Roma as an excuse, visas as preventive logic, judges as sites of resistance", in D. Bigo, E. Guild and S. Carrera (eds), *Foreigners, Refugees or Minorities? Rethinking people in the context of border controls and visas*, Farnham: Ashgate Publishing, pp. 21-38. See also *Cultures & Conflits* (2011), « Les Roms comme prétexte : luttes autour des droits et de l'autorité, Forum », Issue 81-82 (Le Passage par la Violence en Politique).

⁸⁶ European Daily Bulletin, No. 10464, 1 October 2011, p. 14. The Committee noticed that following a submission in July 2011 to the European Commission by Human Rights Watch (HRW) of a document related to the lack of compatibility between the French expulsions of Roma of Romanian and Bulgarian origin and EU law, "*a Commission spokesperson declared that the issue of expulsions of nationals of EU member States fell "exclusively within the jurisdiction of member States" and, consequently, within the member States' obligations under international law, including those arising from the Charter.*

arenas. The Commission's strategy to bring member states' national duties to the forefront of the EU policy priorities has however fostered the emergence of a difficult relationship between free movement, and the (re)integration of Romanian and Bulgarian Citizens of the Union, to which we now turn our analysis.

4.2 (Re)Integration and the Ethnicisation of European citizenship

The Commission and member states' responses have brought a number of paradoxes to the legal and political foundations of European citizenship. This is particularly so as regards the right to move and reside freely within the territory of the member states, as envisaged in Article 21 of the Treaty on the Functioning of the European Union (TFEU) and Article 45 of the EU Charter of Fundamental Rights, both of which enshrine this right at the core of EU citizens' freedoms. The case of Roma exercising freedom of movement complicates the scope and prospects of citizenship of the Union and freedom of circulation. The exercise by Romanian and Bulgarian Roma of EU citizenship mobility rights led them to face the most severe exclusion from the security of residence envisaged by citizenship of the Union and the protection against expulsion. The justification used for this differential treatment has been a reframing of freedom movement of EU Roma or the so-called 'mobile Roma', as having inherent nomadic behaviour. This trait is framed as an illegitimate form of mobility across borders raising fears of potential 'abuses' to the social welfare of the receiving member state and engaging in forms of 'illegalities'. Roma EU citizens are therefore presented as *l'individu anormal*, 'the abnormal EU citizen'⁸⁷ or the non-modern⁸⁸ who by definition is seen as coming from 'the outside', or still shows signs of outsider or foreigner.

'Integration' and 'reintegration', now also mixed with a discourse on inclusion and reinsertion, have been presented as the solutions to the French Roma affair in order to address the deviations attributed to the exercise of EU citizenship freedoms by Roma from Romania and Bulgaria. They constitute new policy tools for EU institutional actors and national governments that saw their interests directly colliding in the summer of 2010 to blur and reframe their spheres of responsibility on the rights and freedoms of Romanian citizens of Roma origin, and pass that responsibility on to the Roma themselves. Those Roma who have exercised the freedom to move to another member state are considered not to be legally authorised to do so. Their movements are construed as the embodiment of the undesirable expression of free movement, and are instead encouraged to exercise their freedom of movement back to their country of origin and to reintegrate there. The 'nomad Roma' is in this way designated as the undeserving Union citizens. As the Romanian President Basescu declared in the above-mentioned European Council Summit of September 2010:

It is necessary to make a distinction between the Roma who are nomads and the others. *The Roma who are sedentary do not constitute a problem of integration. The nomad Roma, on the contrary, do not respect the law, they don't want to work. They don't understand the need to send their kids to school. We need a solution based on their culture* (emphasis added).

The mobile Roma are also constructed as a risk category of citizens whose attributed abnormality is their lack of integration into 'the mainstream national society'. Their lack of integration is understood as the cause of their proclivity to move and their reintegration as a potential solution for them 'not to leave' their countries of origin. This notion of re-integration as an effective way to encourage Romanian nationals of Roma origin not to exercise their freedom to move after being returned from France serves as the fundamental basis of the Franco-Romanian bilateral agreement referred to in section 3. The underlying public goal might well constitute a challenge or even an indirect restriction on the right to leave envisaged in Article 4.1 of the Citizens Directive 2004/38, which stipulates the right by all EU citizens holding a valid identity card or a passport to leave the territory of a member state to travel to another one. The freedom to

⁸⁷ M. Foucault (1999), *Les Anormaux*, Cours au Collège de France. 1974 – 1975, Hautes Études, Paris : Gallimard Le Seuil. See in particular Foucault's study of the "*problématique de l'anomalie et les techniques autour de l'anomalie*". See also M. Foucault (2001), *Dits et Écrits 1954 – 1988*, II (1976 – 1988), Édition Établie sous la Direction de D. Defert et F. Ewald avec la collaboration de J. Lagrange, Paris: Quarto Gallimard, p. 1690.

⁸⁸ For an theoretical account of the framing of the Roma as 'pre-civilised' or 'pre-modern' see M. Koblanck (2013), Legal modernities – conceptual transformations around the management of human mobility in international relations, in D. Bigo, E. Guild and S. Carrera (eds), *Foreigners, Refugees or Minorities? Rethinking people in the context of border controls and visas*, Farnham: Ashgate Publishing, pp. 75-90.

move encompasses both the right of citizens of the European Union to enter a member state other than the one of origin and the right to leave the state of origin.

It is worth signalling that this has been a contested issue both for Romania and Bulgaria, which both present historical precedents in applying restrictions to nationals to leave their territories.⁸⁹ Citizenship of the Union made these restrictions unlawful as they were conceived to be discriminatory measures against their own citizens. This was a matter covered by the CJEU in the Case C-33/07 *Jida*,⁹⁰ which dealt with a preliminary ruling asking whether Article 27 of the Citizens Directive 2004/38 prohibits member state legislation from restricting the right of their nationals to travel to another member state on the ground that s/he had been previously repatriated from the latter member state on account of his 'illegal residence' there. The case covered Mr Jipa who had left Romania on 10 September 2006 to travel to Belgium. On account of his irregular residence in Belgium, he was repatriated to Romania under the terms of a Readmission Agreement which had been concluded in 1995 between Belgium, Luxembourg and the Netherlands before Romania's accession to the EU. The CJEU held that the Citizens Directive does not

... preclude national legislation that allows the right of a national of a Member State to travel to another Member State to be restricted, in particular on the ground that he has previously been repatriated from the latter Member State on account of his 'illegal residence' there, *provided that* the personal conduct of that national constitutes a genuine, present and sufficiently serious threat to one of the fundamental interests of society and that the restrictive measure envisaged is appropriate to ensure the achievement of the objective it pursues and does not go beyond what is necessary to attain it (emphasis added).

Also in light of this judgement, the fact that the Romanian national had been returned because he no longer met the residency conditions stipulated in the Citizens Directive 2004/38 could not be regarded as sufficient basis for restricting the right of a national to travel to another member state.⁹¹ The CJEU left it to national courts, and therefore a judicial authority, to decide the extent to which a particular person can be deemed to constitute a threat to public policy and security.

In addition to the tensions raised by the re-integration/integration paradigm with respect to the right to leave by nationals of the territory of their country of origin, the focus on integration or inclusion also changes some of the fundamental contours of citizenship of the Union towards venues where ethnic origin becomes a central factor in the recognition and attribution of European citizenship freedoms against unlawful derogations by member state authorities. As we have underlined elsewhere, "*what is clear is that among some European states, citizenship of the Union has taken on an ethnic dimension. It is no longer simply a statement of the relationship of the individual with his or her state of origin but an indication of ethnicity*".⁹² The ethnicity and nomadic lifestyle of Roma as framed by insecurity policies and discourses seems to have taken precedence over their acts and claims of citizenship, including those related to citizenship of the Union.

The Roma are henceforth treated as unwanted foreigners and undeserving beggars abusing EU rights and freedoms because of their attributed differences. They are described as not meeting the cultural and social criteria of the legitimate community of consumers eligible for its protection and security that the state and the EU claim to guarantee for all their citizens, including the right to leave and move freely. Describing them as 'nomads' instead of EU citizens freely moving within the Union justifies the restrictions of their citizenship

⁸⁹ See for instance Court of Justice of the European Union, Case C-249/11 *Byankov*, 4 October 2012.

⁹⁰ Court of Justice of the European Union, Case C-33/07 *Ministry of Administration and Home Affairs – Directorate General for Passports, Bucharest v. Gheorghe Jipa*, 10 July 2008. Refer also to Case 81/87 *Daily Mail and General Trust* [1988] ECR 5483, paragraph 16; Case C-379/92 *Peralta* [1994] ECR I-3453, paragraph 31; and Case C-415/93 *Bosman* [1995] ECR I-4921, paragraph 97.

⁹¹ G. Fábíán and E. Veress (2009), 'The Possibility of Restricting the Free Movement of the Own Citizens: Comments on the Jipa-case', in P. Minderhoud and N. Trimikliniotis (eds), *Rethinking the Free Movement of Workers: The European Challenges Ahead*, Wolf Legal Publishers, Nijmegen, pp. 197-210.

⁹² E. Guild and S. Carrera (2013), 'Introduction: International relations, citizenship and minority discrimination: setting the scene', in D. Bigo, E. Guild and S. Carrera (eds), *Foreigners, Refugees or Minorities? Rethinking people in the context of border controls and visas*, Farnham: Ashgate Publishing, pp. 1-20.

freedoms (and their forced return) on grounds of insecurity. It also reinforces the popular idea that they are not ‘true’ nationals of EU member states,⁹³ and therefore are not entitled to non-discriminatory treatment in the scope of European citizenship. The Roma will also need to be integrated into the imagined way of life and society in the attributed state of origin, and be more national than the constructed nationals in order to be allowed to cross the functional border towards the level of membership granted to the model of perfect European citizen.⁹⁴ Thus, as Aradau et al. (2013) have rightly argued, “*while free movement can lead to rights claims in the EU, it is intertwined with modes of governance that instigate hierarchies of citizenship through criminalising and delegitimizing particular mobilities and mobile subjects*”.⁹⁵

There is a clear tension, however, between the priority given to (re)integration policies and the non-discrimination principle and duty assigned to national and EU institutions in the scope of EU citizenship for all individuals holding nationality of a member state, independently of their economic situation or ethnicity. The insistence on the re-integration of Romanian and Bulgarian Roma who have exercised their freedom to move also raises questions of ethnic discrimination in relation to EU mobile citizens from other EU member states as well as other Romanian and Bulgarian nationals deemed to be integrated into their societies and national cultures. The most far-reaching end result has been however that the onus of responsibility has fallen on the Roma themselves via the promotion of ‘Roma integration and reintegration national policies’ in the scope of the EU Framework and bilateral member state cooperation.

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